

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Van Jenkins,

Plaintiffs, Case No. 14-cv-11812
v. Hon. Judith E. Levy
Mag. Judge Anthony P. Patti

Michigan Department of
Corrections, *et al.*,

Defendants.

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**OPINION AND ORDER ADOPTING REPORT AND
RECOMMENDATION [78] TO DISMISS WITHOUT PREJUDICE
PLAINTIFF'S CLAIMS AGAINST PATRICK M. CLARK FOR
FAILURE TO EFFECT TIMELY SERVICE AND TO DISMISS
THIS ACTION**

Plaintiff Van Jenkins is a Michigan Department of Corrections (“MDOC”) inmate. On May 6, 2014, he filed a *pro se* amended complaint against defendants Patrick M. Clark, Officer Fox, Erika T. Saxton, Officer Bradley, Gary Edwards, Fern Bean [sic], Adrian Green, and A. White. (Dkt. 2.) The Court granted plaintiff’s request to proceed *in forma pauperis* on his claims. Thereafter, waivers of service were returned executed for all defendants except defendants Clark and

Green. (See Dkt. 11; Dkt. 12; Dkt. 13; Dkt. 14; Dkt. 15; Dkt. 16; Dkt. 18; Dkt. 23.) On September 10, 2014, the Court ordered that the U.S. Marshals again attempt to serve defendants Clark and Green, and a waiver was returned executed as to defendant Green on October 7, 2014. (Dkt. 35.) The waiver was returned unexecuted as to defendant Clark, noting that he no longer worked for MDOC. (Dkt. 37.)

After this second attempt at service, plaintiff took no action for the next eleven months. Thus on August 18, 2015, the Court issued a show-cause order as to why the case should not be dismissed as to defendant Clark. (See Dkt. 70.) The Court requested that plaintiff explain why an extension of time should be allowed to effect service and to provide a reasonable timeline. (*Id.*) Plaintiff timely responded, arguing that he was entitled to service by the U.S. Marshals pursuant to his status as an *in forma pauperis* prisoner under 28 U.S.C. § 1915. (Dkt. 77.) He also contends that defendant Clark breached his duty to the court by failing to provide an updated address and that the MDOC interfered with his legal mail and denied wages he was due. (*Id.*) He seeks appointment of counsel in order to properly litigate the case. (*Id.*)

This matter is before the Court on Magistrate Judge Anthony P. Patti's September 23, 2015 Report and Recommendation. (Dkt. 78.) The Magistrate Judge recommends dismissing, without prejudice, plaintiff's claims against defendant Clark under Federal Rule of Civil Procedure 4(m) and dismissing the case, because defendant Clark is the only remaining defendant. (*Id.*)

No party filed objections to the Report and Recommendation, and the time for doing so has expired. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). The failure to object to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). The failure to object also relieves this Court from its duty to review this matter independently. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The Court has nonetheless thoroughly reviewed the Report and Recommendation and relevant parts of the record, and agrees with the conclusions of the Magistrate Judge.

Accordingly,

The Magistrate Judge's Report and Recommendation is adopted. Plaintiff's claims against defendant Clark are dismissed without prejudice. Furthermore, the case is dismissed.

IT IS SO ORDERED.

Dated: October 21, 2015
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 21, 2015.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager